

[In this case a decree for the sale of the Holliday Street Theatre, in the city of Baltimore, was passed, the sale made and ratified, and the proceeds brought into court for distribution. A statement of the proceedings up to the ratification of the sale will be found in the cases of *Wagner & Marshall vs. Cohen*, 6 *Gill*, 97, and *Cohen vs. Wagner*, 6 *Gill*, 236. The questions now decided by the Chancellor arise upon the distribution of the proceeds, and are presented by a petition filed on the 20th of September, 1848, by James V. Wagner and others, and exceptions to the Auditor's account filed by the same parties about the same time.

The petition in substance alleges, that certain persons including B. I. Cohen, were trustees of the Holliday Street Theatre property, and as such received large funds into their hands for which, with the exception of said Cohen, they had all faithfully accounted. That said Cohen, on the 18th of December, 1839, borrowed of the treasurer of the said board of trustees \$462 50, of the trust funds, for which he gave his bond of that date, which is filed with the petition. That afterwards, on the 20th of October, 1842, said Cohen agreed to transfer shares of stock at \$125 per share, to cover his indebtedness, the other trustees doing the same thing, at the same time, and have done so, which shares they have also brought into distribution among the stockholders in this case. That Mendez I. Cohen was aware of such arrangement and has repeatedly stated that the trustees of the theatre had stock transferred to them belonging to the theatre. That said Mendez, knowing such fact, obtained a transfer of thirty-five shares of said stock from J. I. Cohen & Brothers, in which said B. I. Cohen was interested to an amount exceeding four shares. That said B. I. Cohen died, leaving one share standing in his name, and that letters of administration upon his estate have been granted to his son, Israel I. Cohen, who holds assets sufficient to meet this claim, and who is now claiming the dividend on said share. The petition prays, that said Israel I. Cohen may pay into court the amount of the bond given by his father, or deliver up to be cancelled four shares of the stock of the theatre, or that he may deliver up the said one